

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

APRIL M.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH CASE No. L- 2005120336
consolidated with L- 2005070011

DECISION

Administrative Law Judge Elizabeth Feyzbakhsh, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California on February 23, 2006.

Deborah K. Crudup, Consumer Services Representative, Inland Regional Center, represented the service agency, Inland Regional Center.

Rory M., father of the claimant April M. represented the claimant.

Oral and documentary evidence was received. The parties presented oral closing arguments and on February 23, 2006, the record was closed and the matter submitted.

JURISDICTIONAL MATTERS

Claimant filed two requests for fair hearing. The first request was filed on June 29, 2005. Claimant requested a van lift and minivan modification, a bathroom remodel and an increase in respite hours from 48 to 72.

The second request for fair hearing was filed on November 25, 2005 and in that request Claimant again requested an increase in respite hours from 48 to 72 and requested that Inland Regional Center continue to fund respite hours through the parental respite voucher program.

The requests were consolidated for hearing during a prehearing conference. Prior to taking testimony on the day of the hearing, the parties reached a settlement agreement regarding the issue of the parental respite voucher program. This decision addresses the remaining issues.

ISSUES

1. Should the service agency be required to provide funding for the purchase of an electric van lift and the modification of a minivan to accommodate the van lift for the claimant?
2. Should the service agency be required to provide funding for the remodel of claimant's bathroom?
3. Should the service agency be required to provide funding for an increase in respite hours from 48 to 72?

FACTUAL FINDINGS

1. April M. is a 15 year old girl with cerebral palsy. Her date of birth is April 29, 1990. She is a client of Inland Regional Center, and eligible for services under the Lanterman Act based on her diagnosis of spastic cerebral palsy. She is 64 inches tall and weighs approximately 100 pounds. She lives with her mother, father and two brothers.
2. April has both a manual and electric wheelchair. She uses a walker and a standing table at school.
3. The medical evidence regarding April's condition was conflicting. During an equipment assessment in September, April required maximal assistance for standing pivot transfers. She has subluxation of her hip and complained of severe pain when being transferred. However, therapy consultation notes written by California Children's Services (CCS) in November 2005 indicate that she was able to take 30-40 reciprocal steps with a gait trainer.
4. La Granada MTU Orthopedic Conference Notes dated September 19, 2005 indicate that there is subluxation of the right hip and recommend that Mr. M. take April to be evaluated by Dr. Shook, an orthopedic surgeon. The note indicates that the issue had previously been discussed with Mr. M. As of the date of the hearing Mr. M. had not contacted Dr. Shook for an evaluation. He stated that April was not "ready for surgery".
5. Mr. Miller has not authorized Inland Regional Center to discuss any matters concerning April with any of her medical professionals or any other agency providing services to the family. Because of his refusal to allow Inland Regional Center and California Children's Services to discuss April's condition with each other or with medical professionals, the ability of the service agency to ascertain April's needs has been compromised.
6. Claimant requests the purchase of an electric lift for the family van and modification of the family van because transfers are both difficult due to April's size and painful for April. Presently, Mr. Miller lifts April into the van. They fold a manual wheelchair and place it in the rear of the van.

7. April's most recent quarterly report was completed November 22, 2005. According to the report, April currently uses a standing table at school and at home to strengthen her legs because she wants very much to be able to walk. According to the report, April's father is no longer able to lift her. April has a gait trainer at school and uses a tricycle at home.

8. All witnesses agreed that April's level of pain has increased in the past year. However, that pain may subside after April receives treatment for the subluxation of her hip.

9. At the time claimant requested a fair hearing on the issue of the van conversion, claimant's father owned a 2002 Dodge Minivan. Minivans, including the Dodge Minivan, cannot accommodate persons traveling in electric wheelchairs without extensive modification. The height of the minivan is insufficient to accommodate an electric wheelchair. Modification of this type of vehicle requires either raising the roof or lowering the floor of the vehicle.

10. In late September or early November 2005, claimant's father and some family members were involved in an automobile accident which totaled the Dodge Minivan. Fortunately, no one was seriously injured in the accident.

11. Debra Crudup, Program Manager with the Inland Regional Center, sent a letter to Claimant's father requesting that he consider obtaining a vehicle that is already modified or a vehicle more suitable for transporting an individual with special needs. He was given the names of several used vehicle dealers who specialize in providing transportation for disabled persons.

12. Claimant's father ignored the request of the Inland Regional Center and purchased a 2006, Dodge Minivan, which aside from the model year, is exactly like the one that was totaled. Claimant explains that he did not want to purchase a used car and "buy someone else's problems". Claimant's father knew of the great expense involved in converting a Dodge Minivan at the time he purchased the new one. He did not explain why he opted not to purchase a full sized van or other vehicle that would have required far less modification to accommodate his daughter.

13. Presently, in order to bathe April, Claimant lifts her into the bathtub and bathes her using a handheld shower. Claimant contends that the bathroom is too small to accommodate his daughter. He claims that she has gotten too tall to fit comfortably in the bathtub and it is difficult to wash the side that faces the wall. He further claims that multiple transfers are painful for his daughter.

14. Michelle Knighten, a physical therapist with Inland Regional Center, conducted an equipment assessment to determine April's equipment needs. The assessment was conducted on September 13, 2005. Also present at the assessment were Ellen Gasper, Sandra Lewis, and Lydia Romanski, employees of California Children's Services (CCS), and a representative from a company called Design Mobility. Funding has been authorized by CCS

to purchase a sliding bath chair for April. They brought two rolling bath chairs for demonstration. Neither bath chair was appropriate for the bathroom.

15. Sliding bath chairs can be custom made to fit over various sized toilets for toileting and the same chair can be made so that it slides over the side of the bathtub for bathing. In the opinion of Lydia Romanski, a CCS occupational therapist, a “tilt in space” bath chair would likely work better for April. She believes that there is appropriate equipment for April that they have not yet tried. She does not think a bathroom remodel is appropriate unless those other options are tried first. Claimant’s father was told that he could try other chairs at the CCS offices. He did come to the offices to look at the chairs on one occasion but was unable to try them because of April’s pain. Claimant and her father did not return to try the chairs.

16. If the bathroom was remodeled, the number of transfers required would not decrease. April M. would still need a bath chair in order to access the toilet and shower area. If an appropriate bath chair can be found or customized, there would be no need for a bathroom remodel.

17. Claimant currently receives payment from In Home Support Services (IHSS) for 320 hours of care per month for his daughter. Claimant’s father provides that care himself. Claimant receives 48 hours per month of respite care from Inland Regional Center. Those respite hours are provided by Claimant’s grandmother. April is in school for 6 hours a day, five days a week. Claimant’s father contends that April wakes up two to three times per night and when she awakes; she often needs repositioning and toileting.

18. On several occasions the regional center has provided a temporary increase in respite hours to special circumstances. The regional center provided 72 hours per month of respite care from September 2005 through January 31, 2006 due to the increased hardship arising from the automobile accident in August.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512, subdivision (b) provides:

“As used in this part:

“(b) ‘Services and supports for persons with developmental disabilities’ means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, or towards the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option...”

2. Welfare and Institutions Code section 4648 provides in pertinent part:

“(a) (1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer’s individual program plan.... (a)(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents ... determines will best accomplish all or any part of that consumer’s program plan. ... Regional Center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

3. Title 17, section 54326(c)(1) provides, in pertinent part:

“Regional Centers shall not: (1) Use purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor child’s service needs, the family’s responsibility for providing similar services to a minor child without disabilities, in such instances, the regional center must provide for exceptions, based on family need or hardship.”

4. As to issue number one, the request for modification of the Dodge minivan, claimant has not presented sufficient evidence to warrant modification of the family minivan. Claimant’s father has an obligation to provide for the needs of his daughter just like any other father. It is recognized that claimant has needs far in excess of other children, however, claimant’s father had an obligation to act reasonably in providing for his family. Claimant’s father intentionally purchased a vehicle that was not an appropriate vehicle to accommodate the needs of his daughter. He was given suggestions of more cost effective options and chose none of them. In fact, he did not seriously consider any of the recommendations.

5. The Regional Center does have an obligation to provide needed services and supports. However, in order to determine what claimant’s needs are, they must be privy to certain information. Claimant’s father has refused to allow the Regional Center to discuss claimant with any medical professionals or CCS employees. The proper provision of care for April requires coordination by a team. By limiting the flow of information between the service agencies and the medical professionals, claimant’s father has made it impossible to determine if April’s medical condition warrants an electric van lift and van modification, and has made it impossible to determine whether or not the regional center would be obligated to fund it as the payor of last resort.

6. As to issue number two, the bathroom remodel, claimant has not provided sufficient evidence to require the regional center to provide funding for a bathroom remodel. This request is premature. Claimant has not tried the bath chairs available. There are customized bath chairs which would eliminate the need for a second toilet in the bathroom and

eliminate the need for transfers between showering and toileting. A bathroom remodel would not reduce the number of transfers required. Unless it is determined that no bathchair is appropriate for April, a bathroom remodel is not necessary.

7. As to issue number three, the increase in respite hours from 48 to 72. Sufficient evidence was not presented to warrant the requested increase in hours. Claimant's father is receiving a significant number of hours funded by IHSS, and receiving a significant number of respite hours. Additionally, the regional center has been reasonable in providing temporary increases in hours when a special need arises.

ORDER

The claimant's request for the service agency to provide funding for an electric van lift and van conversion for the claimant is hereby denied.

The claimant's request for the service agency to provide funding of a bathroom remodel in claimant's home is hereby denied.

The claimant's request for an increase in respite hours from 48 to 72 per month is hereby denied.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within the State of California.

Dated: March 10, 2006

ELIZABETH FEYZBAKSH
Administrative Law Judge
Office of Administrative Hearings